

No. 3124.

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

EDWARD WHITE, as Commissioner
of Immigration at the Port of San
Francisco, California,

Appellant,

vs.

TAM SEN,

Appellee.

BRIEF FOR APPELLANT.

Upon Appeal from the Southern Division of the United States
District Court for the Northern District of
California, First Division.

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,

Attorneys for Appellant.

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FRANK B. MONCKTON, Clerk,

By....., Deputy Clerk.

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F. B. MONCKTON,

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STATEMENT OF THE CASE.

This is an appeal from an order of the Southern Division of the United States District Court for the Northern District of California, First Division, discharging on a writ of habeas corpus the said appellee, Tam Sen.

The said Tam Sen is a person of the Chinese race who arrived at the Port of San Francisco on the S. S. "Costa Rica," February 15, 1917, and applied for admission to the United States at said Port as a native born citizen thereof. He presented as a right to enter the United States as a citizen thereof a certified copy of court discharge Number 6411

issued to one Tam Sen out of the District Court of the United States for the Northern District of California, dated December 17, 1888, claiming to be the rightful holder thereof and the identical person referred to therein.

Applicant was given a hearing by the proper Immigration officers and was denied admission to the United States by the aforesaid Commissioner of Immigration on the grounds that he was *not the person discharged* by order of said United States District Court, December 17, 1888 and was therefore not entitled to admission. The appeal was taken from said decision to the Secretary of Labor at Washington, D. C., who affirmed said excluding decision. Thereafter, to wit, on the 4th day of June, 1917, a petition for writ of habeas corpus was filed in the aforesaid District Court, wherein it is alleged that the action of the said Commissioner and the action of the said Secretary of Labor was and is in excess of the authority committed to them under the laws, rules and regulations and was and is an abuse of the authority committed to them by said laws, rules and regulations.

1st. That the said Tam Sen, being a citizen of the United States was entitled to have his status as such determined under the general Immigration laws by a Board of Special Inquiry instead of by the gauge and method provided for in the Chinese exclusion and restriction acts.

2nd. That the said Tam Sen is the same person referred to in a proceeding, entitled "In the Matter of Tam Sen on Habeas Corpus, Number 6411," decided in the aforesaid Court and that the said Court has jurisdiction of said proceeding wherein the citizenship of said Tam Sen was decreed and established, to now determine the identity of the person to whom the said court record proceeding applied.

A demurrer to the petition for writ of habeas corpus was filed by the Government on June 23, 1917, together with respondent's exhibits "A" and "B"; hearing was had and the demurrer overruled and an order made that writ issue returnable June 29, 1917. A return was filed by the Government on June 29, 1917, and the case was re-opened for the taking of testimony. At the conclusion of the hearing it was ordered that the writ of habeas corpus issue, notice of appeal filed December 27, 1917.

ASSIGNMENT OF ERRORS.

I.

That the Court erred in granting the writ of habeas corpus and discharging the alien, Tam Sen, from the custody of Edward White, Commissioner of Immigration at the Port of San Francisco.

II.

That the said Court erred in holding that it had jurisdiction to issue the writ of habeas corpus in the

above entitled cause, as prayed for in the petition of the said Tam Sen for a writ of habeas corpus.

III.

That the Court erred in holding that the allegations contained in said petition for a writ of habeas corpus were sufficient in law to justify the granting and issuing of a writ of habeas corpus.

IV.

That the Court erred in finding that the evidence upon which the Secretary of Labor issued the warrant of deportation for the said Tam Sen was insufficient in character.

V.

That the Court erred in holding that the said Tam Sen was illegally restrained of his liberty by the said Edward White, Commissioner of Immigration, and that the evidence taken at the hearing of said case, under the Immigration Act of February 20, 1907, as amended by the acts of March 26, 1910 and March 4, 1913, and the Chinese Exclusion Laws, was insufficient to justify the said respondent, Edward White, to detain or deport the said Tam Sen.

VI.

That the Court erred in permitting the appellee to go beyond the record as presented upon the hearing

of the petition for a writ of habeas corpus and introduce new and other evidence in conjunction to that submitted on behalf of appellee in the hearings held before the said appellant and the said Secretary of Labor.

VII.

That the Court erred in opening said case and permitting appellee to introduce evidence for the purpose of showing that the said appellee was the same person whose status was determined by the above entitled Court in a proceeding entitled "In the Matter of Tam Sen on Habeas Corpus, No. 6411," at a time prior to the hearing of said petition for a writ of habeas corpus in the above entitled court.

VIII.

That the Court erred in permitting said appellee to introduce evidence for the purpose of contradicting the record and findings of the Secretary of Labor, all of which record and findings were presented by said appellee and were before the Court and duly considered upon the hearing of said petition of said appellee for a writ of habeas corpus.

IX.

That the Court erred in discharging the said appellee, Tam Sen, from the custody of the said Edward White, Commissioner of Immigration, and appellee herein.

ARGUMENT.

The principal points involved in this case are:

FIRST: Whether or not Tam Sen is the person referred to in a proceeding known as "In the Matter of Tam Sen on Habeas Corpus, No. 6411."

SECOND: Whether or not the Court below had jurisdiction in habeas corpus proceedings to determine the identity of the person to whom the said court proceedings apply.

Whether or not Tam Sen is the person referred to in said Court proceedings is purely a question of fact to be determined by the proper Immigration officers after due hearing and examination of all the evidence produced, and being a question of fact, is a question over which the Court below had no jurisdiction and therefore the Court erred in hearing the case de novo for the purpose of determining such fact.

It is a well established principle that where Congress, by constitutional enactments has entrusted to executive officers as a special tribunal determination of all questions of fact, including a claim of citizenship, relating to the right of entry into the United States of Chinese applying therefor, the decision of such executive officers is final, where no abuse of authority is shown. This point was decided in the case of *Ekiu vs. United States*, 142 U. S. 660, wherein the Court says:

“And Congress may, if it sees fit, as in the statutes in question in *United States vs. Jung Ah Lung* just cited, authorize the Courts to investigate and ascertain the facts on which the right to land depends. But, on the other hand, the final determination of these facts may be entrusted by Congress to executive officers; and in such a case, as in all others in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to re-examine or contravert the sufficiency of the evidence on which he acted.”

In the case of *United States vs. Ju Toy*, 198 U. S. 253, the Court says:

“It is established as we have said that the act purports to make the decision of the Department final, whatever the ground on which the right to enter the country is claimed, as well when it is citizenship as when it is domicile, and the belonging to a class excepted from the exclusion acts.”

The Rules and Regulations governing the admission of Chinese provide that they shall be examined, first under the General Immigration Laws and if found admissible thereunder, they shall then be examined under the Chinese Exclusion Acts. This procedure was followed in the case of Tam Sen, who was found admissible under the General Immigration Laws, there appearing to be no statutory grounds thereunder for his denial. He was then examined

under the Chinese Exclusion Acts and it having been determined, after a fair and impartial hearing of the facts in the case by the Commissioner of Immigration for the Port of San Francisco and by the Secretary of Labor at Washington, D. C., that the said Tam Sen *was not the person referred to* in the proceeding known as "In the Matter of Tam Sen on Habeas Corpus, No. 6411," he was refused admission into the United States and his deportation ordered. The finding of the Secretary of Labor on the question of identity was purely a question of fact and under the numerous court decisions was final and conclusive. The District Court, however, assumed jurisdiction apparently upon the theory that the writ of habeas corpus issued in 1888, on which the photograph was submitted for identity, was an old record in said court, and for that reason it had jurisdiction to make the comparison. On taking additional evidence, the District Court reached a conclusion directly opposed to that determined by the administrative officers, upon whom Congress has seen fit to confer exclusive jurisdiction. That this was error, the appellant respectfully cites to this Honorable Court the case of *ex parte Long Lock*, 173 Fed. 208, in which Judge Ray decided, after a most careful review of the Supreme Court decisions above quoted, that the District Court could not reverse the Secretary of Labor on a question of fact, where that official had determined that a Court record giv-

ing a Chinese person American citizenship was not sufficiently identified with him and had ordered his exclusion from the United States.

The Secretary does not in any way attack the validity of this Court record of 1888; he does not in any way question that decision, nor that the picture attached is the photograph of some Chinese person bearing the name of Tam Sen and who appeared before the Court and was discharged, but where the decision of the Secretary has intervened in determining the question of identity, it is an unwarranted assumption of power for the District Court to rule that that executive officer was wrong.

Respectfully submitted,

JOHN W. PRESTON,

United States Attorney,

CASPER A. ORNBAUN,

Asst. United States Attorney,

Attorneys for Appellant.

